

## LEGISLATIVE BILL 67

Approved by the Governor March 7, 2013

Introduced by Schilz, 47.

FOR AN ACT relating to agriculture; to amend sections 2-3965, 2-3966, 2-3971, 2-3975, 2-3976, 2-3977, 2-3981, 2-3982, 2-3986, 2-3988, and 2-3989, Reissue Revised Statutes of Nebraska; to update and change provisions of the Nebraska Milk Act; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 2-3965, Reissue Revised Statutes of Nebraska, is amended to read:

2-3965 (1) Sections 2-3965 to 2-3992 and section 9 of this act and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2005 2011 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Supplies, 2005 Shippers, 2011 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2005 2011 Revision; and

(d) Evaluation of Milk Laboratories, 2005 2011 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2005 2011 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted; and

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and-

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph W.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture.

Sec. 2. Section 2-3966, Reissue Revised Statutes of Nebraska, is amended to read:

2-3966 For purposes of the Nebraska Milk Act, unless the context otherwise requires:

~~(1) 3-A sanitary standards means the standards for dairy equipment formulated by the 3-A sanitary standards committees representing the International Association of Milk, Food and Environmental Sanitarians, the United States Department of Health and Human Services, and the Dairy Industry Committee and published by the International Association of Milk, Food and Environmental Sanitarians in effect on July 1, 2001;~~

(1) 3-A Sanitary Standards means the standards for dairy equipment promulgated jointly by the Sanitary Standards Subcommittee of the Dairy Industry Committee, the Committee on Sanitary Procedure of the International Association for Food Protection, and the Milk Safety Team, Food and Drug Administration, Public Health Service, Center for Food Safety and Applied Nutrition, Department of Health and Human Services in effect on January 1, 2013;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk,

ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk ~~by-product,~~ byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

~~(9)~~ (11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

~~(10)~~ (13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

~~(11)~~ (14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Sec. 3. Section 2-3971, Reissue Revised Statutes of Nebraska, is amended to read:

2-3971 ~~(1) Until July 31, 2008, as a condition precedent to the issuance of a permit issued pursuant to the Nebraska Milk Act, on or before August 1 of each year, the following described annual permit fees shall be paid to the department:~~

Milk Plant .....	\$100.00
Receiving Station .....	100.00
Plant Fabricating Single-Service Articles ..	100.00
Milk Distributor .....	75.00
Transfer Station .....	50.00
Milk Tank Truck Cleaning Facility .....	50.00
Milk Transportation Company .....	25.00
Milk Hauler .....	25.00
Milk Producer .....	No Fee
Milk Tank Truck .....	No Fee

~~(2) If the applicant is an individual, the application for a permit shall include the applicant's social security number.~~

~~(3) Until September 30, 2007, all raw milk produced on farms or pasteurized in plants holding permits issued under the act shall be subject to the payment of inspection fees as prescribed in subsections (4) through (7) of this section. All fees shall be paid on or before the fifteenth of the month for milk produced or processed during the preceding month. Inspection fees for milk pasteurized outside of Nebraska shall be paid by the person shipping such raw milk outside the state. Inspection fees for milk pasteurized within Nebraska shall be paid by the plant pasteurizing such raw milk.~~

~~(4) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three cents per hundredweight of raw milk pasteurized.~~

~~(5) The inspection fee on raw milk produced on a Grade A farm holding a permit issued under the act and pasteurized at a manufacturing milk plant shall be two and one-half cents per hundredweight of raw milk pasteurized in Nebraska, or per hundredweight of raw milk shipped from Nebraska, as appropriate.~~

~~(6) The inspection fee on raw milk produced on a Grade A farm~~

holding a permit issued under the act and pasteurized at a plant located outside of Nebraska shall be two and one-half cents per hundredweight of raw milk shipped from Nebraska.

(7) The inspection fee on raw milk produced on a Grade A farm not holding a permit issued under the act and pasteurized at a Grade A plant holding a permit issued under such law shall be three-fourths of one cent per hundredweight of raw milk pasteurized.

(8)(a) Beginning August 1, 2008, as (1)(a) As a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

- (i) Milk Plant plant processing 100,000 or less pounds per month...\$100.00;
- (ii) Milk Plant plant processing 100,001 to 2,000,000 pounds per month...\$500.00;
- (iii) Milk Plant plant processing more than 2,000,000 pounds per month...\$1,000.00;
- (iv) Receiving Station station.....\$200.00;
- (v) Plant Fabricating Single-Service Articles fabricating single-service articles..\$300.00;
- (vi) Milk Distributor distributor.....\$150.00;
- (vii) Transfer Station station.....\$100.00;
- (viii) Milk Tank Truck Cleaning Facility tank truck cleaning facility.....\$100.00;
- (ix) Bulk Milk Hauler/Sampler milk hauler/sampler.....\$25.00;
- (x) Field Representative representative.....\$25.00; and
- (xi) Grade A Milk Producer producer.....No Fee; and-
- (xii) Manufacturing milk producer.....No Fee.

(b) Beginning August 1, 2008, and on On or before each August 1 thereafter a Milk Transportation Company shall pay twenty-five dollars for each milk tank truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(9)(a) Beginning October 1, 2007, all (2)(a) All milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

- (b) There shall be three categories of inspection fees as follows:
  - (i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;
  - (ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and
  - (iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the fifteenth last day of the month for milk or components of milk produced or processed during the preceding month. Any unpaid fee shall be increased one and one-half percent each month beginning with the day following the date the fee was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid. The purpose of increasing the fees is to cover the administrative costs associated with collecting fees, and all money collected as increased fees shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

- (i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;
- (ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of the program cash fund appropriations allocated for the act; and
- (iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

~~(10)~~ (3) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Sec. 4. Section 2-3975, Reissue Revised Statutes of Nebraska, is amended to read:

2-3975 The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services, United States Food and Drug Administration, in its documents, as delineated in section 2-3965, entitled Methods of Making Sanitation Ratings of Milk Supplies, 2005 Revision, Shippers and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers, 2005 Revision, of the National Conference on Interstate Milk Shipments.

Sec. 5. Section 2-3976, Reissue Revised Statutes of Nebraska, is amended to read:

2-3976 All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. ~~Any money in the Manufacturing Milk Cash Fund on September 1, 2007, shall be transferred to the Pure Milk Cash Fund on such date.~~

Sec. 6. Section 2-3977, Reissue Revised Statutes of Nebraska, is amended to read:

2-3977 (1) ~~Beginning August 1, 2008, milk~~ Milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise provide for the services of a competent and qualified field representative who may:

- (a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;
- (b) Collect and submit samples at the request of the department; and
- (c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Sec. 7. Section 2-3981, Reissue Revised Statutes of Nebraska, is amended to read:

2-3981 (1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in ~~subdivision (1)~~ subsection (2) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance, ~~2005 Revision,~~ relating to somatic cells shall apply to milk for

manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance, ~~2005 Revision.~~

Sec. 8. Section 2-3982, Reissue Revised Statutes of Nebraska, is amended to read:

2-3982 (1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, ~~2006.~~ 2011.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Sec. 9. A facility producing milk for manufacturing purposes in existence prior to July 1, 2013, which does not meet all of the requirements of the Grade A Pasteurized Milk Ordinance shall be acceptable for use only if it meets the requirements of sections 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce milk and facilities that produce milk that are under new ownership shall be required to meet the requirements of the Grade A Pasteurized Milk Ordinance.

Sec. 10. Section 2-3986, Reissue Revised Statutes of Nebraska, is amended to read:

2-3986 Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A ~~sanitary standards.~~ Sanitary Standards.

Sec. 11. Section 2-3988, Reissue Revised Statutes of Nebraska, is amended to read:

2-3988 At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A ~~sanitary standards~~ Sanitary Standards and comply with applicable rules and regulations of the department. Equipment manufactured in conformity with 3-A Sanitary Standards complies with the sanitary design and construction standards of the Nebraska Milk Act.

Sec. 12. Section 2-3989, Reissue Revised Statutes of Nebraska, is amended to read:

2-3989 The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three

years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. ~~On and after October 1, 1989, all~~ All new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Sec. 13. Original sections 2-3965, 2-3966, 2-3971, 2-3975, 2-3976, 2-3977, 2-3981, 2-3982, 2-3986, 2-3988, and 2-3989, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.